



THE SCOPE OF UNFAIR TRADE PRACTICES UNDER THE CONSUMER PROTECTION ACT 1986

Prof. K. Madhusudhana Rao

Professor of Law, Dr. B. R. A.College of Law, Andhra University, Visakhapatnam-530003, India.

Consumer Protection Act 1986 is enacted for better protection of consumer interests. To attain this objective this Act contains the provisions for the protection of consumers from the Unfair Trade Practices also. The definition of Unfair Trade Practices is evolutionary in character. Before 1984 there was no definition of Unfair Trade Practices under any enactment. In 1984 the definition of Unfair Trade Practices was added to the M.R.T.P. Act 1969 w.e.f. 1-8-1984 as Section 36-A. After the Consumer Protection Act was enacted 1986, the definition of Unfair Trade Practices was removed from the M.R.T.P. Act 1969 and the same was incorporated, verbatim in the Consumer Protection Act 1986 w.e.f. 18-6-1993, thus making the Consumer Protection Act 1986 a complete Code for protection of consumer interests.

The definition of Unfair Trade Practices as provided in sec. 2(1)(r) of the Consumer Protection Act 1986 is as follows:

“2[(r)“unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-

- (1) the practice of making any statement, whether orally or in writing or by visible representation which,-
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely represents that the services are of a particular standard, quality or grade
 - (iii) falsely represents any re-built, second-hand, renovated, re-conditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

- (viii) makes to the public a representation in a form that purports to be,-
 - (i) a warranty or guarantee of a product or of any goods ; or services; or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix) Materially misleads the public concerning the price at which a product or like products or goods or services, have been or are,

ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made ;

- (x) Gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation:- For the purposes of Clause (1), a statement that is-

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container ; or
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for displayed or sale; or
- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public;

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

- (2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale of supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation: For the purposes of Clause (2) “bargaining price” means,-

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
- (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold ;

- (3) Permits:-

- (a) the offering of gifts, prizes or their items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole ;
- (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

²[(3A) with holding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation:- For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspapers in which the scheme was originally advertised;]

- (4) permits the sale or supply of goods intended to be used, or are of a kind

likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

- (5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

³[(6) Manufacture of spurious goods or offering such goods or offering such goods for sale or adopting deceptive practices in the provision of service].

It may be noted that sub-section (3 A) of section 2(1) (r) and clause (6) were added to this definition in 2002 to the Consumer Protection Act 1986 to widen the scope of the definition of Unfair Trade Practices with a view to give more protection to the consumers.

Before deciding as to what is an Unfair Trade Practice, regard must be had to the nature of the Trade Practice as such. A trade practice which causes loss or injury to the consumers of such goods or services either by eliminating or restricting competition would be considered as unfair trade practice. If the power to decide the nature of any trade practice as unfair trade practice is given to a quasi-judicial authority, such authority is bound to follow the principle of *Audi Alteram Partem* before deciding the case, failing which the decision of the quasi-judicial authority is invalid. This inference can be drawn from the judgment of the Supreme Court in *Nirma Industries Ltd Vs Director General (Investigation & Registration)*⁴ which was decided under Section 36-A of the MRTP Act 1969. The factual matrix of this case is as follows. The appellant, a public limited company, having registered in Ahmadabad, is engaged in the manufacture and sale of Nirma Washing Powder, Nirma Detergent Cakes and Nirma Bath Soaps. The appellant claimed that having established a good market for the sale of its various products thought of offering a scheme as an incentive to the consumers for its products. Therefore, the appellant flatted a scheme of awarding and distributing prizes through a lottery. According to this scheme, the appellant placed a coupon bearing a number in each KG pack of detergent/washing powder. The scheme was valid till 31st July, 1991 and the draw of lots was to be held on August 30th 1991. The coupon kept in 1 KG packet mentioned that prizes worth Rupees 71 Lakhs were to be distributed which included Contessa Car, Maruthi 800 Car, BPL TV set, Gold Chain, Titan Watch, Steel Jug, Ladies Purse, Steel Brawl set and Cash⁵.

One Mr. Azad Singh, New Delhi, made a complaint to the Director General (I&R) on 24-7-1991, alleging, inter alia, that the company while floating the scheme in question did not inform the customer as to in which news paper the result would be published, the company had increased the prize of the detergent powder along with prize scheme, the said scheme is harming the interest of the other companies in this competition and the condition of the coupon is so bad that while opening the bag/ packet, it would get torn and the winner of the prize will have to face difficulty in getting the prize which would help the company in evading the responsibility to give the prize. Therefore, Azad Singh prayed that action be taken against the company to save the poor people from being robbed. The Director General (I & R) failed an application before the M.R.T.P. Commission requiring it to hold an enquiry into the Unfair Trade Practices U/S 36-D (1) of the M.R.T.P. Act 1969 and to pass an order of "cease and desist" against the company. In the complaint it was alleged that the scheme in question was floated with a view to promote the sale of its detergent powder, that it lured the customers to purchase more and more Nirma powder under the temptation of getting prizes, that the trade practice of offering prizes would lead to excessive purchases and consumption by the customers in the expectation of getting prizes, that such avoidable and excessive purchases were real loss to the consumers and that it had deleterious impact on competition in as much as extraneous consideration other than quality and the price of the product tend to determine the consumer preferences, that there are several detergent manufactures in India that the impugned scheme has affected, distorted and restricted competition among the various manufactures of detergent powder and the conduct of lottery or game of chance for the purpose of promoting the sale, use or supply of detergent powder by the appellant amounts to Unfair Trade Practices U/S 36-A(3) (a) and (b)⁶ of the M.R.T.P. Act 1969. The Director General (I & R) in is complaint to the Commission alleged that the company had increased the price of the detergent powder just prior to launching of the scheme with an intention to recover the value of the prizes fully or partly from the consumers by raising the prices of its products. Therefore, the company had indulged in unfair trade practices with in the meaning of U/S 36-A (3) (a) and (b) of the M.R.T.P. Act 1969. Therefore, the Director General (I & R) recommended that the Commission would inquire into the complaint and pass "Cease and Desist" order against the company'. After hiring both the parties the Commission found that the charge under section 36-A (3) (a) of the Act is proved and accordingly directed the company not to repeat the same in future. This order was challenged before the Supreme Court in this Case.

The Supreme Court analyzing Section 36-A of the M.R.T.P. Act, ruled that it is quite clear that trade practice which is under taken by the company for the purpose of promoting the sale, use are supply of any goods or for the provision of any

service/services adopts one or more following practices and there by causes loss or injury to the consumers of such goods or service whether by eliminating or restricting competition or otherwise would amount to Unfair Trade Practices. The above key words used in Section 36-A while defining the Unfair Trade Practices have laid down emphasis on "Thereby causes loss or injury to the consumers of such goods or services whether by eliminating or restricting competition or otherwise". It must, therefore, follow that any such Unfair Trade Practice which causes loss or injury to the consumers of such goods or services either by eliminating or restricting or completion or otherwise would attract the penal consequences provided under this Act. Each of the clauses employed in section 36-A is interwoven by the use of consumption and would indicate that before determining a trade practice being Unfair Trade Practice, the Commission has to be satisfied as to whether the necessary ingredients contained therein are satisfied or not. The words "or otherwise" in section 36-A assuring are of wide import and would signify not only actual loss or injury suffered by the consumers but also would include probable are likely hood of consumers suffering loss are injury in any form. Even for that there has to be some cogent material before the commission to support a finding of Unfair Trade Practice and any inferential finding would be contrary to section 36-A of the Act. It is necessary for the Commission to call upon the parties to substantiate the allegation. The burden of proof, the nature of proof and adequacy thereof would depend upon the facts and circumstance of each case⁸.

Applying the law to the facts in the instant case, the Apex Court observed that the Commission in its impugned order held that the gift/prize scheme floated by the Company amounted to unfair trade practices under section 36 A(3)(a) of the Act and to support to this finding, the only material placed before the Commission was the complaint by the Director General (I&R) containing an averment that the Company had raised the prices of detergent powder a few days before the impugned scheme was floated. This finding of the Commission proceeds of the footing that the prize money under the impugned scheme was either fully or partly covered by the amount charged in the transaction as a whole⁹. This finding is without any cogent evidence before the Commission. As rightly argued by the appellant, if the Commission were to call up on the company to justify the increase in the price of the detergent powder de hors the prize money, the company would have produced the material to dislodge the assumption that this increase in prices of the detergent powder was not bona fide and in fact an exercise to cover fully or partly the prize money. As a matter fact the appellant placed before the court the audited balance-sheet and other evidence which would indicated that the increase the price of the powder was necessitated because of increase in the prices of the raw-materials and other connected factors. Thus, as no opportunity is given to the appellant to produce evidence contrary to the Commission's finding the Supreme Court opined that the impugned order is unjustifiable. Accordingly the matter is remitted to the National Commission to conduct the de nove proceedings allowing the parties to produce the evidence before it¹⁰.

The Consumer fora at the time of deciding the 'unfair trade practices' must have the following legal position in their favour.

1. They must have power to issue directions or corrective advertisements in the case of 'unfair trade practices', on the date of their decisions.
2. Existing law dealing with advertisements should not be ignored.
3. What is not prayed for by the complainant cannot be granted.

If any order is passed by the Consumer fora in violation of the above conditions their observation are invalid. This can be inferred from the decision of the Supreme Court in *M/s. Godfrey Phillips India Ltd., Vs. Ajay Kumar*¹¹. The facts of this case were that an advertisement was issued in news papers and news magazines in 1999 for the cigarettes manufactured and sold by the appellant under the brand name of 'Red and White'. The impugned advertisement apart from showing the packet of cigarettes with the a forced brand name stated "Red and White smokers are one of a kind". The advertisement also shows the smiling face of Actor Akshay Kumar hold a cigarette. It also contains the statutory warning "Cigarette smoking is injurious to health", as well as the price of the pack. The complaint was dismissed by the District Forum as the complainant had filed a suit in relation to the impugned advertisement in the Civil Court. In appeal in State Commission affirmed the order of the District Forum. Thereafter the complainant filed review petition before the National Commission. The National Commission held that the case of the complainant is that smoking of a cigarette by Akshay Kumar with the slogans used in the advertisement would detract the people from the statutory warning. Seeing it comparative size of the letters etc., the statutory warning loses it prominence which is usurped by more prominent and attractive Akshay Kumar et.al and is sufficient to detract the attention of the viewers from the statutory warning to the image of the Akshay Kumar with the slogan indicating smokers of Red and White cigarette could be super actor performing all film stunts without duplicates. This was sufficient to hold that the impugned advertisement amounted to unfair trade practice. On the basis of this finding the National Commission gave the following directions:-

1. To discontinue forthwith the unfair trade practice of detracting from the statutory specified warning and not to publish any advertisement like

the present one in any language giving the impression that a person who smokes Red and White cigarette could perform such acts as could be performed by Akshay Kumar in films and thereby detracting from the specified warning.

2. To issue corrective advertisements of equal size in all the news papers in Hindi and English, like the present advertisement to neutralize the effect of the said impugned misleading advertisements.
3. Sri Ajay Kumar, shall be paid a sum of Rs.20,000/- by way of compensation and Rs.5,000/- as costs.

In the Supreme Court, the appellant contested all the above three findings of the National Commission. Accepting the contention of the appellant the Supreme Court held as follows:-

1. Direction (1) was given without any material or evidence whatsoever and there was not even a suggestion/pleading that the advertisement was of Akshay Kumar or that he could perform certain stunts without duplicates. There was not even an allegation that the statutory warning was detracted from. When such serious allegation which was to be established was not even specifically pleaded and when nothing specific was indicated in the complaint, the commission should not have given the direction on pure surmises¹².
2. As regards direction (2), the Supreme stated that advertisements in relation to cigarettes was prohibited by the Advertisements Act 2003¹³. Therefore power to direct to give corrective advertisement was not there for the National Commission under Section 14 of the Consumer Protection Act. This power was given to the Consumer Fora by virtue of an amendment to the Consumer Protection Act in 2002, (w.e.f. 15-03-2003) which added clause (hc) to Section 14¹⁴ (It is to be noted that the complaint was filed on 10-01-2000 for advertisement issued in 1991). Therefore after 15-03-2003 only the power to direct to give corrective advertisement can be issued by the Consumer Fora, but not before.
3. As regards the third direction, the Supreme Court stated that there was no prior for any compensation. There was no allegation that the complainant has suffered any loss. Section 14(1) (d) contemplates award of compensation to the consumer for any loss or injury suffered due to negligence of the opposite party. As there was no allegation or material placed on records indicating the loss suffered by the complainant compensation need not be awarded by the consumer fora. Moreover as the complainant himself stated that he was smoking cigarette for the last two decades the impugned advertisements cannot be said to have affected the complainant and / or caused any loss to him to warrant grant of compensation¹⁵. This case indicates the consumer fora has power and jurisdiction to order to give corrective advertisements under Section 14 of the Consumer Protection Act from 15-03-2003 in the matters of unfair trade practices.

In determine as to what is an unfair trade practice, it is necessary to examine whether the representation, complained, of contains the elements of misleading the buyer. If a reasonable man, on reading the advertisement, forms a belief different from the truth then it can be inferred that there is unfair trade practice, reiterated the Supreme Court in *Ludhiana Improvement Trust Vs Sakhati Co-operative House Building Society*¹⁶ in the following fact situation. In the year 1970 the appellant Ludhiana Improvement Trust, formulated a scheme, known as Model Town Extension Part-II. For this purpose proceedings for acquisition of land in certain villages were initiated. Land owned by several co-operative Housing societies were also notified as a part of the land proposed to the acquired. However, before the announcement of the awards in respect of lands to be acquired, representation were made by several societies to the Trust as also to the Government seeking exemption of their land from acquisition. The trust acceded to the request by some of the societies and recommended to the Government that the land of these societies be exempted from the acquisition which was accepted by the Government. Thereafter the Government issued a notification U/S 56 of the Punjab Town Improvement Act 1922 for abandonment of proposal for acquisition of lands belonging to these societies, the responded society being one of them. After issuing the said exemption notification, the responded society requested the trust to allot plots to their members as a large portions of their land were under encouragement. Apparently, the request of the society is not legally correction in as much as due to the exemption the society remain the owner of the land and the Trust was major competent nor any obligation to allot plots to them. Thus, the Trust did not accept the request of the society for allotment of plots.

However, after change of guard as a Chairman of the Trust, the process for allotment of plots gained momentum, so much so that the land of one society was exchanged with the land of another society under plots were allotted even on a land belonging to the Trust. In the case of the responded society, as per the condition of the exemption, the society could carve out plots in area admeasuring up to 23,000 Sq.yards, but the trust has carved out 154 plots in 23,800 Sq. yards. Out of these, 123 plots were given to the society including 23 plots in the land belonging to other societies and 43 plots on Trust land. It sees that the society was not satis-

fied with the said allotment, in as much as its stand was that the Trust, through its Chairman, has taken over the land of the society by acquisition and had promised to allot about 151 plots. Out of 151 plots the position of 1 plot bearing No. 32 measuring 150 Sq.yards, situated in Modern Town Extension Part-II Block-C, Durgi Road, Ludhiana was not given by the Trust to the Society on the ground that a suit in respect of the private land, which was the subject matter of plot no.32 had been filed. The said civil suit was decreed in favour of one Mr.Gurucharan Singh. After the decree the society requested the trust to allot alternative plot to them in lieu of plot no. 32. As the trust failed to concede the request of the society, the society filed a complaint in the District Forum, under the Consumer Protection Act, which directed the appellant to an alternative plot. On appeal the State Commission held that though the society was given the exemption, the area was developed by the Trust and it was then offered to the society in the form of position of 151 residential plots of 150 sq.yards each and therefore not handing over a plot in lieu of plot no.32 amounted to "unfair trade practices" on the part of appellant Trust. The National Commission confirmed this opinion. From this an appeal was prepared before the Supreme Court.

The Supreme Court analyzing the definition of "unfair trade practices" stated that the basic ingredients of the "unfair trade practices" are that (1) there must be trade practice, (2) the trade practice must be employed for the purpose of promoting the same use or supply of any goods or for the provision of any service, and (3) the trade practice adopts unfair methods or unfair or deceptive practice including any of the practice enumerated in clauses from (1) to (6) of Section 2 (r) of the Act. Therefore any trade practice which is adopted for the purpose of promoting the sale, use of supply of any goods or for the provision of any service, by adopting any unfair method or unfair or deceptive practice as to be treated as "unfair trade practices" for which an action under the Act would lie, provided, the complainant is able to prove / establish that he is a consumer within the meaning of the Act.

Elaborating further, the Supreme Court stated that in determining the meaning of "unfair trade practices" it is necessary to examine whether the representation, complained of, contains the element of misleading the buyer. If a reasonable man on reading the advertisement, forms a belief different from the truth of the matter, then it can be said that it is "unfair trade practices". This position will have to be viewed with objectivity, in an impersonal manner. Applying this legal position to the facts in issue in the present case, the supreme court observed that the power exercised by the three consumer fora being quasi-judicial in nature they are required to take into account all the relevant factors and the material brought on record by both the parties. The averments in the complaint by the consumer cannot be taken as Gospel Truth. To support a finding of "unfair trade practices", there has to be some cogent material before the Commission and any inferential finding is not sufficient to attract section 2(r) of the Act. In the instant case the three Consumer Fora failed to appreciate that on passing on the exemption order by the Government the acquisition proceedings in respect of the respondent's land stood abandoned. It is amply clear that the exemption notification did not contemplate that the appellant trust was to allot plots to the members of the responded society whose land has been exempted for acquisition under the Government notification.

As a matter of fact, it has been highlighted in the Inquiry report submitted by the Inquiry Officer (which was ordered on the allegations of irregularities in the allotment of plots by the Chairman and other officials) that the appellant was under no obligation to allot plots to the society whose land had been exempted because after the abandonment of acquisition in terms of Section 56(1) of the Punjab Town Improvement Act 1922, they failed to recover full development charges from the some of the societies and even members of the societies also appeared to be bogus. Furthermore, in view of the civil suit, in respect of land out of which plot no.32 had been carved out, having been decreed in favour of the land owner, it was clear that the said peace of land did not belonged to the society which could be placed at the disposal of the appellant for development and yet, it appear that in connivance with the officials of the appellant, they succeeded in getting it included in the list of allotted plots with an ulterior motive to get a plot in lieu thereof. Accordingly, the Supreme Court concluded that all these facts are relevant which were ignored by all the three fora and therefore, the finding that the non-delivery of plot no.32 are an alternative plot in lieu thereof amounted to "unfair trade practices" on the part of the appellant Trust cannot be sustained. Hence, there is no material on the record to conclude that the appellant had indulged in "unfair trade practices".

There are Allopathic and Ayurvedic medical practitioners involved in rendering medical services to the society. Prescribing Allopathic medicine by the Ayurvedic Doctors and vice-versa was treated as "unfair trade practices" under the Consumer Protection Act in *Bhawar Kanwar Vs. R.K.Gupta*¹⁷ in the following fact situation. One Mr. Prasanth, S/o. of the Appellant suffered febrile convulsions during fever at the age of six months. Doctors who examined in informed that the children can get such kind of fits during fever. He was treated with paracetamol tablets. As the patient is suffering from the same disease even after that, he was treated by Dr. Ashok, consultant Neurologist, S.M.S.Medical College Hospital, Jaipur and at AIIMS, New Delhi. Then the appellant came across an advertisement in a news paper by name Jan Satta, dated 08-08-1993 offering treatment of the patients having fits with Ayurvedic medicine by Dr. R. K. Gupta, the first respondent. As the respondent claimed total cure, the patient

admitted in the hospital run by the respondent at Rishikesh. The respondent prescribed medicine to the patient informing that the medicine is a combination of hundreds of herbs. The appellant was given a printed medial prescription for administering the medicine. During medication the condition of the patient deteriorated further and the patient is getting fits ever without fever also, hitherto which were occasioned only during fever. As the condition of the patient was deteriorating further, the appellant taken the patient to the respondent on his instruction and was given medicine in the form of thick white tablets and the appellant was instructed to use the medicine for three more years. The respondent assured more powerful medicine even though the condition of the patient worsening further when convulsions become more frequent with longer periods.

On making inquiry as to the nature of medicine prescribed by the respondent it was revealed that the small white tablets were SELGIN which is not meant for Children. It was alleged that the respondent was passing of allopathic medicines as Ayurvedic medicine. It was further alleged that he is a quack and guilty of medical negligence and criminal negligence and breach of duty as he is playing with the lives of the people without understanding the disease. He was prescribing allopathic medicine for which is not competent to prescribe¹⁸. This matters was raised before the National Commission which directed that the medicines be sent to an appropriate laboratory for testing their nature. The laboratory test revealed that the claim of the respondent was wrong and the National Commission held that he was guilty of "unfair trade practices". But in this case that is inconsistent with the existing medical practice is that the letter dated 24-03-2003 issued by the Secretary, Medical Education Department, Government of UP authorizing the Ayurvedi / Unani Medical Practitioners to prescribe Allopathic medicine also. Although this letter was accepted by the National Commission also¹⁹, with due respect to their authority, it is submitted that as a system of Ayurvedi / Unani Medicine is different from Allopathic Medical System, the UP Medical Education Department letter cited above should have been declared unreasonable because Ayurvedic/Unani Doctors are not having either sound knowledge in Allopathic Medicine nor having any formal qualification and training in prescribing in Allopathic Medicine. Both the systems are totally different.

On appeal the Supreme Court held that the respondent was held guilty of "unfair trade practices" and adopted unfair method and deceptive practice by making false statements orally as well as in writing. The supreme Court further ruled that as Prasanth and the appellant having undergone physical and mental injury due to misleading advertisement, "unfair trade practices" and negligence of the respondents, both Prasanth and the appellant are entitled for enhanced compensation of Rs.15,00,000/- for payment in their favour with a direction to the respondents to pay the amount to the appellant within three months²⁰.

CONCLUSION:

Very few cases reached the Apex Court on the topic of "unfair trade practices" for its consideration. The litigation on this topic appear to be very minimal as consequence of which there is no occasion to the Apex Court to consider the entire definition of "unfair trade practices" for interpretation on different fact situations by considering all the elements/essentials of the definition of "unfair trade practices". The fact that the definition of "unfair trade practices" is removed from the MRTP Act 1969 and added to the Consumer Protection Act 1986 indicates that the rules of interpretation of earlier statute i.e. MRTP Act can be used for the interpretation of later statute i.e. the Consumer Protection Act 1986 on the issue of "unfair trade practices". More specifically these rules are as follows²¹:-

1. Use of the same words in similar connection in a later statute gives rise to a presumption that they are intended to convey the same meaning as in the earlier statute.
2. On the same logic when word in an earlier statute have received an authoritative exposition by a superior court, use of same words in similar context, in a later Act will give rise to a presumption that the legislature intends that the same interpretation should also be followed for construction of those words in the later statute.
3. When a particular form of legislative enactment which has received authoritative interpretation whether by judicial decision or a long course of practice, is adopted in the framing of a later statute, it is a sound rule of construction to hold that the words so adopted were intended by the legislature to bare the meaning which has been so put up on them.

In view of this position, for interpretation of "unfair trade practices" under the Consumer Protection Act, 1986, the interpretation placed on the definition of "unfair trade practices" under the MRTP Act 1969 also relevant as this cannon of construction founds its acceptance of the Supreme Court also when it observed that, "it is a well settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which has been judicially put on them under the repealed Act, because the Legislature is presumed to be acquainted with the construction which the Court serve put on the words and when they repeat the same words, they must be taken to have accepted the interpretation put on them by the court as correctly reflecting the Legislative mind"²².

ENDNOTES:

1. Subs. by Act 50 of 1993, w.e.f 18-6-1993.
2. Inserted by Consumer Protection (Amendment) Act, 2002.
3. Inserted by Consumer Protection (Amendment) Act, 2002.
4. AIR 1997 SC 2382 – The bench consisted of J.S. Verma, CJI, and S.P. Kurdukar, J, and the Judgement of the Court was delivered by S.P.Kurdukar, J.
5. Ibid- Para- 2.
6. Which are in pari materia with Section 2(r) (3) (a) and (b) of the Consumer Protection Act 1986.
7. AIR 1997 SC 238 to at pp 2382- 83, Para-3
8. Ibid- at pp 2385 – 86, para-13
9. Ibid-at P.2386, para-14
10. Ibid at PP.2386-87, paras – 14 & 15
11. AIR 2008 SC.1828-The bench consisted of Dr.Arijit Pasayat and P.Sathasivam (as he then was) J.J. and the Judgment of the Court was delivered by Dr.Arijit Pasayat.
12. ibid-p.1830, para-15.
13. The Cigarettes and Other Tobacco products (Prohibition of Advertisements and Regulation of Trade and Commerce, production, supply and distribution) Act 2003, w.e.f. 18-05-2003.
14. Sec.14(1)(hc) – "to issue corrective advertisements to neutralise the effect of misleading advertisements at the cost of the Opposite Party responsible for issuing such misleading advertisements".
15. AIR 2008 SC 1828, at P. 1831, para 16 & 17.
16. (2009) 12.SCC.369-The bench consisted of D.K.Jain and R.M. Lodha J.J. and the judgment of the court was delivered by D.K. Jain J.
17. (2013) 4 SCC. 252 – The bench consisted of G.S.Singhvi and S.J. Mukhopadhaya J.J. and the judgment of the Court was delivered by S.J. Mukhopadhaya J.
18. Ibid at PP.253-255, para 3-9
19. Ibid at P.256, para-13
20. Ibid at P.257, Paras 19 & 20- the case was decide on 05-04-2013.
21. See G.P.Singh, "Principles of Statutory interpretation" (Nagpur:Wadhwa:2001) PP.239-249.
22. Per Venkatarama Iyer J in Bengal Immunity Co. Vs. Bihar, AIR 1955 SC 661, at P.749.